

Qualified Immunity in Oregon

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What Is Qualified Immunity?

Qualified Immunity is a *federal* legal doctrine that provides that an officer may not be held liable for damages unless the officer intentionally deprives a person of clearly established statutory or constitutional rights of which a reasonable person would have known.

It has been used to prevent a survivor from recovering when an officer –

1. Released a police dog on a surrendering suspect sitting with his arms raised;
2. Bear hugged a woman and then slammed her to the ground, breaking her collarbone and knocking her unconscious for walking away from the officer, in the absence of any sign she was violent;
3. Shot a child while intending to shoot a non-threatening dog; and
4. Pepper sprayed an inmate, which he admitted was “for no reason.”

What Could We Do in a Special Session?

- We could enhance the *existing* tort claims process against public entities by –
 1. Affirmatively declaring that qualified immunity does not apply in state court proceedings; and
 2. Make recoveries in these cases fairer, by –
 - a) lifting the cap on this narrow set of torts;
 - b) providing for vicarious liability for officers who saw the misconduct and failed to take action (effectively multiplying the cap); and/or
 - c) providing for reasonable attorney fees.
- Washington County Sheriff's Officer shoots man on his own property
 - Jury finds \$7 million in damages
 - Caps reduce damages to \$1.1 million (two local gov't agencies)

What Are the Longer Term Issues?

1. Considering whether a separate civil rights cause of action in state court is appropriate
2. Providing the courts with better information about prior officer misconduct
3. Addressing the problem of 'out of scope' behavior
4. "Closing the loop" on misconduct cases by requiring reporting from the courts to DPSST or otherwise addressing deterrence through insurance
5. Considering (limited) personal liability or another tool to promote personal accountability
6. Addressing the role of Independent Police Review/Civilian Review
7. Examining objectivity in the internal affairs process in use of force cases
8. Closing the 'local discipline' loophole in the misconduct database